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HUMAN RIGHTS COMMITTEE BEGINS REVIEW OF REPORT OF AFGHANISTAN

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GENEVA, 10 July -- The Human Rights Committee, at two meetings today, reviewed the report of Afghanistan, hearing an introduction by the representative of Afghanistan and questions and comments from Committee members.

Representing Afghanistan was Akbar Kherad, of the Permanent Mission of Afghanistan in Geneva.

Speakers in the discussion were: Alejandro Serrano Caldera, expert from Nicaragua; Fausto Pocar, expert from Italy; Julio Prado Vallejo, expert from Ecuador; Joseph A.L. Cooray, expert from Sri Lanka; Néjib Bouziri, expert from Tunisia; Andres Aguilar, expert from Venezuela; Christian Tomuschat, expert from the Federal Republic of Germany; Rosalyn Higgins, expert from the United Kingdom; Amos Wako, expert from Kenya; Bernhard Graefrath, expert from the German Democratic Republic; Torkel Opsahl, expert from Norway; Vojin Dimitrijevic, expert from Yugoslavia; Birame N'Diaye, expert from Senegal; Adam Zielinski, expert from Poland; and Anatoly Petrovich Movchan, expert from the Soviet Union.

At a closed meeting on Thursday, 11 July, the Committee will consider communications under the Optional Protocol. It will continue its review of the report of Afghanistan at its next public meeting on Friday, 12 July.

Report of Afghanistan

Introducing the report, AKBAR KHERAD (Afghanistan) reaffirmed his country's respect for the protection of human rights and fundamental freedoms. Although his country had not yet had a lot of experience in that field, there was already a series of legislation to consolidate the juridical and practical guarantees of the rights and liberties of the Afghan people.

The revolution of 1978 resulted in the establishment of a democratic regime in Afghanistan, reflecting the rights of the people to self-determination, he said. It represented the logical end of social, political and economic domination by the previous ruling circles.

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Since then, more than 300 laws had been promulgated, many aimed at furthering human rights. That was not a conclusive process: the laws would continue to be updated and revised. Among the legislation were laws to end arbitrary arrests and searches; guarantees of the right to life and freedom of conscience; and respect for national, historical and cultural traditions. Legislation guaranteed the equality of every citizen before the law, and the equality of men and women. However, Afghanistan had not been able to accede to the Convention on the Elimination of All Forms of Discrimination against Women because some of its provisions were not in accord with Islamic tenets and Afghan law.

Afghan legislation affirmed the rights to work, rest, education, health care and social security. The ownership of private property and goods was respected, as was the inviolability of a person's house. Citizens had the right to freedom of movement and of their place of residence, and the right to raise complaints before state organs.

Those measures were not just on paper, he said. The Government aimed to give all laws practical effect and respected all the articles of the International Covenant on Civil and Political Rights. The law anticipated certain limitations of rights during public emergencies, but such limitations would not result in a derogation of articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 of the Covenant. Participation by the masses in administration and economic development through traditional local and national democratic institutions was encouraged. There were no restrictions on the liberty to practise Islam or other religions unless national security required it.

War propaganda was strictly prohibited, he said, as the International Covenants had no meaning if citizens were not free from the threat of war. The law stated that no one should be arbitrarily deprived of his life. Capital punishment was rarely pronounced and only for very serious inhuman and unforgivable crimes. There was a presumption of innocence until proved otherwise by a competent court. The accused had a right to defend themselves, to a lawyer of their own choice and to appeal to a higher court. Torture and forcible extraction of confessions were prohibited and punishable by imprisonment. Anyone arrested must not be held for more than 72 hours without the soundness of the arrest being verified.

Special tribunals could be set up within the provisions of the law, to judge crimes against internal or external security. One such tribunal had been set up: it was provisional and owed its existence to the war unleashed on Afghanistan by imperialist forces. The tribunal would continue only until the situation returned to normal. It was supervised by the judiciary and functioned democratically.

The judiciary was independent of the executive and all court hearings were held in public except in certain clearly defined situations.

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In conclusion, Mr. Kherad said the revolution took into account the historical, cultural and spiritual values of the people. It aimed to develop what earlier generations had created and to build a society free from exploitation.

Discussion of Afghan Report

In their questions and comments, Committee members said they appreciated Afghanistan's co-operation whose aim was to improve human rights through constructive dialogue with the Committee. The fact that Afghanistan had ratified the Covenant on Civil and Political Rights was a positive indication of its motivation towards human rights. Members thanked the representative of Afghanistan for expanding on his country's report which was, as he had himself stated, rather succinct.

Some Committee members regarded the report as not satisfactory as it concentrated on legal and constitutional measures enacted in Afghanistan, but gave no concrete information on how they were put into effect by judicial and administrative authorities. The report did not mention any progress made in human rights, or the difficulties that had been encountered in fulfilling the Covenant.

According to some views expressed in the Committee, the report was a "deluge of lies, unacceptable in every way, and had no connection with the reality of the situation in Afghanistan". It made no reference to what was one of the largest emigration of refugees in history which must have some cause, such as large-scale denial of human rights.

Committee members commented that the right to self-determination was one of the fundamental principles underlying the Covenant. Information, such as was provided in the report of the Special Rapporteur, Professor Ermacora, showed that there were difficulties in Afghanistan in the enjoyment of that right. Such large numbers of refugees, and armed internal resistance, did not seem compatible with the full enjoyment by the Afghan people, as a whole, of self-determination. What were the internal and external measures adopted by the Government to respond to this state of affairs and allow the people to enjoy these rights in full? they asked.

Further information would be appreciated on what legal and political guarantees were available to the people to enjoy the right to self-determination. Committee members asked how the presence of 100,000 foreign troops and foreign advisers in ministries and the secret police in Afghanistan was compatible with self-determination. How far was the law an expression of the will of the people? Was it true that the Constitution was directly taken from the Soviet Constitution?

Some members asked what were the Government's reactions to resolutions on the right of the Afghan people to self-determination, passed by the non-aligned Summit meeting and the General Assembly.

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Implementation of Covenant

Committee members asked whether the Covenant on Civil and Political Rights was incorporated in the Afghan Constitution, and whether the Covenant could be invoked before the courts in Afghanistan if a citizen considered his rights had been violated. They asked if the Covenant had been published in Afghanistan and if it was freely available in the Afghan language, so that awareness was developed among the military, political and prison officers, as well as the people.

How, Committee members asked, was it ensured that the foreign troops present in Afghanistan complied with the Government's obligations under the Covenant?

Refugees

Committee members asked how many refugees were there and what was their situation. What steps had been taken to resolve the situation, including measures initiated by the United Nations? Was it true that refugees had been bombed and strafed? Why had the refugees left Afghanistan if the revolution was aimed at defending all the Afghan people? If their departure was because of human rights violations, they asked, what steps were being taken to give effect to those rights?

Members said they would welcome further information on the ability of the refugees to return and on any programmes which had been devised to facilitate their return and resettlement.

With reference to page 4, paragraph 1 of the report of Afghanistan, Committee members asked what constituted an ex-citizen of Afghanistan, under what circumstances were people prevented from leaving or re-entering the country and under what conditions could they return? What was the normal procedure, for people who were not refugees, to leave the country? On the right to freedom of movement, it was asked whether it was true that the sale of houses over a certain value was regulated by the Khad (secret police), and financial collateral was required for obtaining passports.

Emergency Situation

The state of civil war and the emergency situation was bound to affect human rights, Committee members observed. To what extent was this the case? they asked. Had the Government decreed a state of emergency in accordance with article 4 of the Covenant and transmitted its decision to the United Nations Secretary-General? What were the powers of the executive during a state of emergency, and under what circumstances and by which authority could such a state be declared? What rights had been suspended or derogated under the emergency situation, and which articles of the Covenant were affected? How did the civil war affect civil rights in the country and how was the State acting to guarantee rights in the circumstances?

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Some members drew attention to the fact that the Government was forced into taking emergency measures because of organized terrorism against the State. In such circumstances, should not the situation have been stated openly and the Secretary-General notified of the emergency under article 4 of the Covenant? What sectors of the country were outside Government control, and what violations were taking place in those areas? What was the relationship between the law in peacetime and the law in time of war? How did reports that crops were being attacked, thereby removing people's means of subsistence, relate to the right to life contained in article 6? What efforts had been made to diminish the effects of armed conflict, bearing in mind the duty under article 14 to prevent war? Was there material assistance to victims of the war?

Special Tribunals

Committee members asked what was the scope of the authority of the special tribunals. Was there an appeal procedure and was the principle of habeas corpus respected? What were the maximum penalties imposed by the tribunal? Could it pronounce the death penalty and were there statistics on such sentences? Was the tribunal part of a system of bodies lower and higher than it, and was it a military tribunal? Who appointed the judges and how was their independence assured? Were the proceedings summary?

Death Penalty

Committee members asked whether Afghanistan intended to abolish the death penalty. What were the "serious and unforgivable" crimes which carried the death penalty? Were statistics available on how often it had been applied and how many people had been pardoned? Which courts could impose the death penalty and could the sentence be reviewed or appealed to a higher court? More information was required to clarify the statement in the report that the death penalty did not constitute the crime of genocide. How could a competent court's decision constitute a crime? Did the Presidium of the Revolutionary Council have to approve the death penalty and could the accused make representations to the Council?

Arbitrary Killings, Torture or Arrests

What were the powers of courts to investigate arbitrary killings by defence forces? asked Committee members. Some members had heard allegations of tens of thousands of executions, the destruction of villages, the use of gas, poison and exploding toys. Had inquiries taken place into those allegations, had anyone been brought to trial, and what was the outcome of such inquiries? How frequently did extra-judicial killings occur? There were also allegations of torture, rape and ill-treatment in interrogation centres. If those cases existed, had the Government taken steps to investigate them fully?

Committee members asked whether the Khad had powers of arrest and detention, and who controlled those powers. Was it true there were 20,000 Khad operatives and that they could conduct house searches and summary

executions? Further information was requested on when the law permitted house searches and interference with books and correspondence. Information was also required on the legal provisions governing the right to liberty and security of the person, as contained in article 9 of the Covenant. Was it true that such laws had not been made public?

Legal Proceedings

Members of the Committee asked for more information on the judicial system. What was the length of time permitted for provisional imprisonment before a case went before a judge? With reference to page 3, paragraph 4, of the report of Afghanistan, they asked what was the maximum period of detention fixed by law and how long could the courts extend it. Did courts exist other than those mentioned in article 56 of the Afghan Constitution? What control did the executive have over the salaries and pension rights of judges? How were judges removed from office and what was their security of tenure?

Were the minimum guarantees contained in article 14, paragraphs 3 and 5, of the Covenant being fulfilled, particularly with regard to special courts? Were defence lawyers always provided and was it usual to hold proceedings in camera? Were appeals always available? Further information was required on what constituted a political crime, whether people were held indefinitely without trial, under what circumstances were they tried in camera, and whether political prisoners were allowed lawyers and legal assistance.

Clarification was requested on whether in fact the Presidium of the Revolutionary Council was given the power to interpret the law, as indicated by article 43 of the Constitution, instead of the courts. Did the Supreme Court have to report its activities to the Council? Was there a law against official pressure being brought to bear on judges, and if so, how many officials had been relieved of their duties for that? Further information was requested on the number and professional position of lawyers, how many were in private practice or government employ and on the legal aid system. What was meant by the reference on page 3, paragraph 8, of the report to the rehabilitation of young offenders as "pious" members of society?

Prison Conditions

Members of the Committee asked what remedies were available before the courts for people alleging unlawful detention, cruel and inhuman treatment or inhuman conditions of detention. They had heard allegations that prisons were full of political prisoners. What were the conditions in prisons, and were the principles laid down in article 10 of the Covenant followed?

Remedies

Committee members wished to know whether the legal remedies mentioned in the report functioned fully. Were all citizens guaranteed those recourses? Further information on the rules mentioned on page 2, paragraph 2, of the report, which ensured effective remedies for violations of individuals' rights by officials, were requested. What was the machinery and procedure by which a